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10/057,555	01/25/2002	Thomas J. Coffey	23738-69892	2405

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DILWORTH PAXSON LLP
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EXAMINER

FOSTER, ROLAND G

ART UNIT	PAPER NUMBER
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2645

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,555

Applicant(s)

COFFEY, THOMAS J.

Examiner

Roland G. Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-36 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 09, 2004 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

Nonetheless, the applicant argues on page 8 of the amendment, filed on August 09, 2004 (hereinafter "the amendment"), that the new limitation "simultaneously" providing a plurality of users computerized telephone control is not subject to the written description requirement because web access through a web browser, as disclosed on page 11, lines 1-7 of the applicant's invention, implicitly implicates simultaneous support for a plurality of users.

Applicant's arguments have been fully considered but are not deemed persuasive. The provision of simultaneous access critically depends on the web server design and how many simultaneous users, if any, the server is designed to support. Further, many web servers that

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support plural users only do so by processing each user in turn, rather than providing multiple, concurrent processes that simultaneously support plural users at different ports. Thus, simultaneous access is not “implicit” in the use of a web browser. See the 35 U.S.C. 112 rejection below for further details.

Applicant also argues on pages 8 and 9 of the amendment that the examiner relied upon the applicant’s invention to find motivation and that the modification of Langsenkamp (U.S. Patent No. 6,009,149) as set forth by the examiner would impermissibly alter Langsenkamp.

Applicant’s arguments have been fully considered but are not deemed persuasive. Applicant did not cite to the examiner’s suggestion/motivation to combine statement, which sets an independent rationale for modifying Langsenkamp. Further, applicant points out a feature of Langsenkamp that is not being modified. Specifically, applicant points out the outbound call campaign side of Langsenkamp. However, the provisioning side of Langsenkamp is being modified, where the user or subscriber calls in to create an outbound, call campaign, similarly to the applicant’s invention.

For the above reasons, applicant’s arguments are not deemed persuasive and the following rejections are repeated, except where any new grounds of rejection are due to the amendment to the claims.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Before considering possession of the claimed invention, it should first be noted that Applicant's specification fails to necessarily disclose support for the applicant's claim amendment, as required under the written description requirement of 35 USC 112, first paragraph. The written description requirement "is not subsumed by the 'possession' inquiry." Enzo Biochem Inc. v. Gen-Probe Inc., 63 USPQ2d 1609, 323 F3d 956 (CA FC 2002). "Identity of that which is described... is necessary: 'What is claimed by the patent application must be the same as what is disclosed in the specification....' New Railhead Manufacturing LLC v. Vermeer Manufacturing Co., 63 F3d 1290 (CA FC 2002) (quoting from Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., USPQ2d 1843, 298 62 USPQ2d 1705, 122 SCt 1831, 533 US 722 (2002)) (emphasis added). Here, the applicant has introduced the narrow claim limitation "simultaneously providing a plurality of users computerized telephone control" but nowhere does the specification identify where the users are provided simultaneous control. As argued by the applicant on page 8 of the amendment, filed on August 09, 2004, the applicant's specification discloses an embodiment (page 11, lines 1-7) providing web access through web browser and

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thus “[a]s those skill in the art know, it is implicit in the use of a web browser for an interface that simultaneous access is provided to users by the underlying system and method.” This is not the case. The provision of simultaneous access critically depends on the web server design and how many simultaneous users, if any, the server is designed to support. Further, many web servers that support plural users only do so by processing each user in turn, rather than providing multiple, concurrent processes that simultaneously support plural users at different ports. Thus, simultaneous access is not “implicit” in the use of a web browser. Thus, the applicant’s specification does not necessarily disclose simultaneous support for plural users. “It is not a question of whether one skilled in the art might be able to construct the patentee’s device from the teachings of the disclosure [but] whether the application necessarily discloses that particular device.” Jepson v. Coleman, 314 F.2d 533, 536, 136 USPQ 647, 649-50 (CCPA 1963).

Even assuming that the applicant’s specification necessarily discloses support for simultaneous, plural users (which it does not as discussed above), the claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. For example, one of ordinary skill in the art at the time the application was filed would have been unsure that the inventor had properly considered the many design parameters behind providing simultaneous user support such as those discussed above and other parameters such as how many simultaneous channels to provide and the specific type of control system (e.g., processor type, configuration, and number) needed to support simultaneous operations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14, 16-18, and 20-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,009,149 ("Langsenkamp"), of record, in view of U.S. Patent No. 5,802,526 ("Fawcett"), newly cited.

With respect to claim 1, see the following paragraphs for details on how Langsenkamp discloses particular limitations within the claim.

The limitation "providing a plurality of users computerized telephone control" reads on Langsenkamp as follows. Figs. 4-48 (as discussed in more particularity below) provide an operator computerized telephone control over telephone call campaigns via a screen based interface.¹ In addition, plural users provide control over the telephone call campaigns via a telephone interface (col. 7, lines 9-30).

¹ The screen-based interface of Langsenkamp inherently supports multiple users as consistent with the applicant's specification. For example, the Langsenkamp discloses that the user communicates over a bi-directional communications link separating the user's input and display 51 and the hardware/software interface 50 (Fig. 1 and col. 6, lines 34-39), which is similar applicant's specification (page 4, last sentence). Langsenkamp also discloses that the user may be required to enter a password to log on (Fig. 3), which is also similar to applicant's specification (page 9, lines 14-16). Therefore, the screen-based interface of Langsenkamp inherently supports multiple users similarly to applicant's specification, with each user, at most, being required to enter a password to log on. Note that applicant's specification fails to disclose support for simultaneous, plural users.

The limitation "one or more of said plurality of users accessing an interactive interface" reads on the screen based user accessing the interactive, screen based interface for creating call campaign as illustrated clearly in Figs. 2-48. The telephone interface also provides interactivity (col. 7, lines 9-22).

The limitation "for each of said users that have access said interface, supplying values, in response to using said interactive interface" reads on the various values supplied by the while interacting with the interactive interface as illustrated in Figs. 2-48. For example, in Fig. 4 the user supplies call list values. The telephone interface also supplies values provided by the users to control further telephone operations (e.g., col. 18, line 52 – col. 20, line 11).

The limitation "creating a program flow, at least partially, from said supplied values" reads on outbound call campaign structure and consequent flow created by the user while supplying the above values. For example, the user may program a call list (Fig. 4) that uses certain messages (Fig. 6) including the requirement for certain responses (col. 10, lines 16-28) and even subsequent messages (col. 17, lines 40-67). Because the call flow is executed by software executing on a computer (Fig. 1), the call flow is also a program flow. The user values supplied via the telephone interface are also used to create modified program flows (e.g., col. 18, lines 52 – col. 21, lines 27).

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The limitation "for each program flow, running said program flow, at least in part, during a series of telephone calls by an automated calling means" reads on the execution of the previously entered program flow during the calling campaign (series of telephone calls) as illustrated in Figs. 51A-54B.

Although Langsenkamp disclose support for an interactive, screen or phone based interface supporting plural users as discussed above, Langsenkamp fails to disclose that the interactive interface supports the plural users "simultaneously."

However, Fawcett (similarly to Langsenkamp) teaches of a screen based, interactive interface (abstract) that supports plural users simultaneously (col. 6, lines 6-30).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add support for plural simultaneous users as taught by the interactive, screen based system of Fawcett to the interactive, screen based system disclosed by Langsenkamp.

The suggestion/motivation for doing so would have been to increase the efficiency and versatility of an interactive system by support simultaneous users, thereby being able to meet user demand during periods when more than one user desires access to the system.

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Claim 6 differs substantively from claim 1 in that claim 6 recites the interactive interface also requests "certain responses to certain queries." This limitation also reads on Figs. 2-48. For example, in Fig. 25 the user is requested to enter only certain "Geo Zones" (responses) to a Geo Zone query.

Claim 33 differs substantively from claim 6 in that claim 33 recites that a script is created rather than a program flow. The program flow in the claim 1 rejection above creates various call scripts that allow the call recipient to interact and alter the flow of the call in progress. For example, Fig. 51A illustrates that different call scripts are executed based upon the caller response at step 107. Claim 33 also recites additional limitations directed to making a first and second series of telephone calls. This limitation reads on the various calling lists to be called (e.g., Fig. 4) and Geo Zones (e.g., Fig. 25) that the user can select to be called. In addition, the limitation "predetermined criteria" for initiating a second series of calls reads on, for example, the recipient's desire to receive further calls (second series of calls) (Fig. 52B, step 138 and col. 24, lines 1-10) or on the scheduling criteria associated with the second call list (series of calls).

Claim 35 differs substantively from claim 33 in that claim 35 recites that a first and second script are created during the interactive process. The first script is used if it is determined if a live recipient answers. The second script is used if it is determined that an answering machine receives the call. These limitations read upon Figs. 54A and 54B where a first script is created and used if a live recipient answers (steps 214, 216, 218, etc.) and a second script is created and used if an answering machine answers (steps 212, 238).

Claim 36 differs substantively from claim 1 in that claim 36 recites using the program flow during "a series of messages by an automated message means" which reads upon Langsenkamp as discussed in the claim 1 rejection above.

Claim 37 differs substantively from claim 1 in that claim 37 recites an apparatus and interface means which performs functions equivalent to the method steps of claim 1. Therefore, see the claim 1 rejection for additional details. Further, claim 37 recites that the program flow creates a script, which also reads upon Langsenkamp as discussed in the claim 33 rejection above.

With respect to claims 2, 4, 8, 12, and 13 see the claim 33 rejection above.

With respect to claim 3, see Fig. 54A, step 214.

With respect to claim 5, see col. 18, lines 56-67.

With respect to claim 7, see col. 18, lines 5-10.

With respect to claims 9 and 10, the program flow comprises preexisting components, which can be used as templates such as call lists, Geo zones, etc. (see the claim 1 rejection above for further details)

With respect to claim 11, the script comprises preexisting templates to create interactivity such as a built-in "response" requirement thus creating a interactivity (Fig. 6), sample text scripts (Fig. 10), and pre-assigned responses (Fig. 45).

With respect to claim 14, see the claim 35 rejection for further details.

With respect to claim 16, the each call list comprises a list of potential recipients (Fig. 4), which are identified by, for example, telephone numbers (Fig. 41).

With respect to claims 17 and 18, see col. 18, lines 3-67 and col. 24, lines 1-10.

With respect to claims 20-23, see col. 18, lines 1-45 for call scheduling based upon time. Scheduling is also based on priority (Fig. 17) and Geo Zone (Fig. 25)

With respect to claim 24, see Fig. 41.

With respect to claims 25 and 26, see Fig. 52B, col. 18, lines 3-11, col. 19, lines 40-63 for various examples of changing the schedule based upon call results.

With respect to claims 27-32, plural recipients on the call list receive more than on call under a variety of circumstances (e.g., see Fig. 52B, step 138 where the recipient wants further

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information or calls and Fig. 54A, step 208 where the recipient fails to answer and is thus called back) and according to various call schedules (see the claim 20 rejection above) which are alterable based upon call results (see the claim 25 rejection above).

With respect to claim 34, see Fig. 52B, step 138 and col. 24, lines 1-10 as discussed in the claim 33 rejection above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langsenkamp in view of Fawcett as applied to claims 6 and 12 above.

Although Langsenkamp disclose that the interactive, call script presents alternative actions and responses to the call recipient as discussed above, Langsenkamp fails to specifically disclose that the specific actions are either a response by a human or a response by an auto attendant.

However, "Official Notice" was taken in the prior Office action that both the concept and advantages of a interactive, call script, such as those used in interactive voice response (IVR)

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systems that provide the user with the alternative to either receive a response by a human, such as an operator, or a response by the IVR system, would have been well-known and expected in the art. The applicant's lack of traverse to the officially noticed fact in the prior Office action is taken as an admission of the facts noticed.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add the alternative actions of either operator intervention or an IVR system prompt to the IVR system providing alternative actions as disclosed by Langsenkamp in view of Fawcett.

The suggestion/motivation for doing so would have been to increase the reliability and user-friendliness of an IVR system by providing the user the ability to ask for an operator in cases where the user becomes confused or irritated with the automated IVR dialog. Providing a choice between operator intervention and continued IVR prompts is well-known in the art, such as when the user is prompted "press 1 for [a particular action], press 2 for....press 0 for the operator."

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langsenkamp in view of Fawcett as applied to claim 6 above, and further in view of U.S. Patent No. 5,901,209 ("Tannenbaum"), as used in the last Office action.

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Langsenkamp as modified fails to disclose substituting the caller ID during the outgoing call.

However, Tannenbaum (similarly to Langsenkamp) is directed to a outbound dialing, call campaign system (Fig. 1) that substitutes caller ID during the outgoing call (title and abstract).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to add the caller ID substitution as taught by the outbound dialing, call campaign system of Tannenbaum to the outbound dialing, call campaign system of Langsenkamp in view of Fawcett.

The suggestion/motivation for doing so would have been to increase the accuracy, productivity, and call completion rates of an outbound, call campaign. Specifically, using the caller ID of the real party in interest (e.g., a charity) rather than using the caller ID of the agent or call bureau would have helped to overcome the natural skepticism of the called party as to the true identity of the caller and also avoided inappropriate and counterproductive disclosure of the agent's caller ID (e.g., when the caller is a law enforcement officer) (Tannenbaum , col. 2, lines 19-54).

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roland Foster whose telephone number is (703) 305-1491. The examiner can normally be reached on Monday through Friday from 9:00 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan S. Tsang, can be reached on (703) 305-4895. The fax phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is (703) 306-0377.



Roland G. Foster
Primary Patent Examiner
December 11, 2004